

Basic Concepts of Service Tax

2.1 Introduction

In India, Government's primary sources of revenue are direct and indirect taxes. Earlier, central excise duty on the goods manufactured/produced in India and customs duties on imported goods constituted major sources of indirect taxes in India. However, revenue receipts from customs & excise declined constantly due to World Trade Commitments and rationalization of commodity duties.

On the other hand, service sector started growing phenomenally thereby pushing back the contribution of traditional contributors like agriculture and manufacturing sectors to GDP. Growing contribution to GDP accompanied by increasing growth rate in service sector promised new and wider avenues of taxation to the Government. It was felt that substantial revenue should come from the service sector and the tax on goods (excise duty) should be complemented with the tax on services. The tax on services could reduce the degree of intensity of taxation on manufacturing and trade without forcing the Government to compromise on the revenue needs, thereby enabling better pricing of its products by the manufacturing sector in the global market.

With these objectives in mind, service tax was introduced in India in 1994 and today it is envisaged as tax of future.

2.2 Genesis of service tax in India

The imposition of service tax was in sequel to the Report of the Chelliah Committee on Tax Reforms. On these recommendations, Dr. Manmohan Singh, the then Union Finance Minister, in his Budget speech (year 1994-95) introduced the new concept to tax services by mentioning "There is no sound reason for exempting services from taxation, when goods are taxed and many countries treat goods and services alike for tax purposes. The Tax Reforms Committee has also recommended imposition of tax on services as a measure for broadening the base of indirect taxes. I, therefore, propose to make a modest effort in this direction by imposing a tax on services of telephones, non-life insurance and stock brokers." Thus, initially service tax was imposed on 3 services.

The baton then passed on to successive finance ministers who widened the service tax net in their rein. This selective approach of taxation of services continued till 30.06.2012. With the introduction of the Finance Act, 2012, India embraced the new system of taxation of services by way of the introduction of negative list. Hence, with effect from July 1, 2012, there is comprehensive taxation of the entire service sector.

2.3 Constitutional provisions

Initially there was no specific entry in the Union List for levying service tax. Service tax was levied by the Central Government by drawing power from entry 97 of the Union List. Entry 97 is a 'residuary entry' in List-I, which has been reproduced below:

"97 - Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists."

The 'residuary entry' provides wide powers to the Central Government in respect of taxation of the subjects not mentioned in the Lists given by the constitution.

However, as a result of deliberations between the States and the Centre and as per the recommendations of the various expert committees, entry 92C was introduced in the VII Schedule in the Union List vide Constitution (92nd Amendment) Act, 2003 with effect from 07.01.2004. Entry 92C reads as under:

"92C - Taxes on services."

A new Article 268A [Service tax levied by Union and collected and appropriated by the Union and the States] was inserted in the Constitution which reads as follows:

- (1) Taxes on services shall be levied by the Government of India and such tax shall be collected and appropriated by the Government of India and the State in the manner provided in clause (2).
- (2) The proceeds in any financial year of any such tax levied in accordance with the provisions of clause (1) shall be--
 - (a) Collected by the Government of India and the States;
 - (b) Appropriated by the Government of India and the States,

in accordance with such principles of collection and appropriation as may be formulated by the Parliament by law.

A consequential amendment to Article 270 of the Constitution was also made to enable Parliament to formulate by law, principles for determining the modalities of levying the service tax by the Central Government and collection of the proceeds thereof by the Central Government and the State Government.

With this amendment in the Constitution, the Central Government has become competent to enact a separate legislation on service tax.

Note: Although Parliament has passed the Constitutional amendment making entry 92C to Union List, this provision has not yet been made effective by the Parliament. Consequently, service tax is presently levied by virtue of Entry 97 only.

2.4 Sources of service tax law

Service tax was introduced in the year 1994 but till date, there is no independent statute for levying service tax. However, following sources provide statutory provisions relating to service

2.3 Indirect Taxes

tax and can be broadly grouped under the following categories:

(1) Finance Act, 1994: The statutory provisions relating to levy of service tax on services were first promulgated through Chapter V of the Finance Act, 1994. Since then, Chapter V of the Finance Act, 1994 is working as the Act for the service tax levy. Later, in the year 2003, the Finance Act, 2003 inserted Chapter VA to deal with advance rulings.

In the year 2004, the provisions relating to levy of 'education cess' on the amount of service tax were made applicable through Chapter VI of the Finance (No.2) Act, 2004 and in the year 2007, the provisions relating to levy of 'Secondary and Higher education cess' on the amount of service tax were made applicable through Chapter VI of the Finance Act, 2007.

(2) Rules on service tax: Section 94 of Chapter V and section 96 -I of Chapter VA of the Finance Act, 1994 grants power to the Central Government for making rules for effective carrying out the provisions of these Chapters. Using these powers, the Central Government has issued the Services Tax Rules 1994, Service Tax (Advance Rulings) Rules, 2003, Service Tax (Registration of Special Category of Persons) Rules, 2005, Service Tax (Determination of Value) Rules, 2006, Point of Taxation Rules, 2011, Place of Provision of Service Rules, 2012 etc.

Rules should be read with the statutory provisions contained in the Act. Rules are made for carrying out the provisions of the Act and the rules cannot override the provisions contained in the Act i.e. in short, the rules can never override the Act and cannot be in conflict with the same.

(3) Notifications on service tax: Sections 93 and 94 of Chapter V, and section 96-I of Chapter VA of the Finance Act, 1994 empower the Central Government to issue notifications to exempt any service from service tax and to make rules to implement service tax provisions. Accordingly, notifications on service tax have been issued by the Central Government from time to time. These notifications usually declare date of enforceability of service tax provisions, provide rules relating to service tax, make amendments therein, provide or withdraw exemptions from service tax or deal with any other matter which the Central Government may think would facilitate the governance of service tax matters.

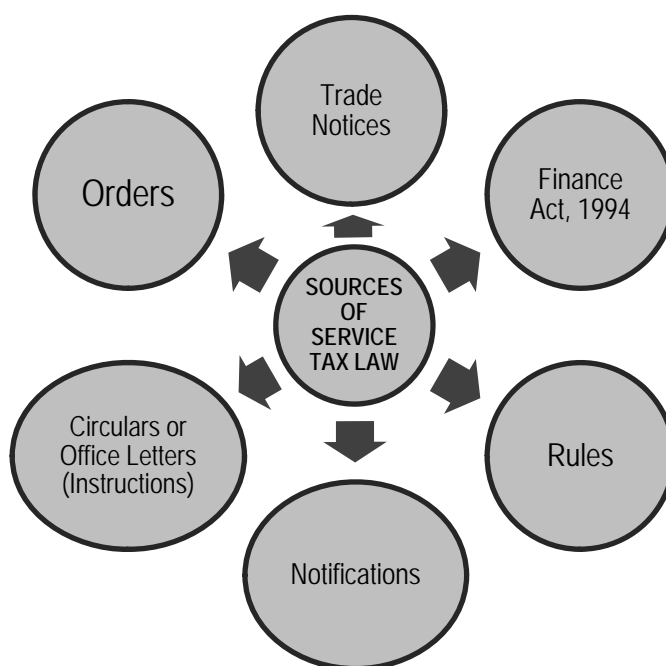
(4) Circulars or Office Letters (Instructions) on service tax: The Central Board of Excise and Customs (CBEC) issues departmental circulars or instruction letters from time to time to explain the scope of taxable services and the scheme of service tax administration etc. These circulars/instructions have to be read with the statutory provisions and notifications on service tax.

The circulars clarify the provisions of the Act and thus, bring out the real intention of the legislature. However, the provisions of any Act of the Parliament cannot be altered or contradicted or changed by the Departmental circulars.

(5) Orders on service tax: Orders on service tax may be issued either by the CBEC or by the Central Government. Rule 3 of the Service Tax Rules, 1994, empowers the CBEC to appoint such Central Excise Officers as it thinks fit for exercising the powers under Chapter V of the Finance Act, 1994. Accordingly, orders have been issued by the CBEC, from time to time, to define jurisdiction of Central Excise Officers for the purposes of service tax.

(6) **Trade Notices on service tax:** Trade Notices are issued by the Central Excise/Service Tax Commissionerates. These Commissionerates receive various instructions from the Ministry of Finance or Central Board of Excise & Customs for effective implementation and administration of the various provisions of service tax law. The same are circulated among the field officers and the instructions which pertain to trade are communicated to them in the form of trade notices. Trade Associations are supplied with the copies of these trade notices. Individual assesses may also apply for copies of trade notices. The trade notice disseminate the contents of the notifications and circulars/letters/orders, define their jurisdiction; identify the banks in which service tax can be deposited; give clarifications regarding service tax matters, etc.

The various components making service tax law have been represented in the following diagram:



2.5 Selective vs. comprehensive coverage

Depending on the socio-economic compulsions, each country evolved a taxation system on services adopting either a comprehensive approach or a selective approach. In comprehensive approach all services are made taxable and a negative list is provided to exempt some of the services. In selective approach, selective services are subjected to service tax. While most of the developed countries, tax is levied on all the services with very few and limited exemptions.

2.5 Indirect Taxes

India began its journey of taxation of services on July 1, 1994 with a selective approach for taxation of services. The first year had very modest collections of ₹ 407 crore.

After appearing largely as just-another-tax for the first 8 years, with collections touching ₹ 3,302 crore in 2001-02, service tax took some giant leaps in the next 7 years, both on the back of wider coverage as well as increase in tax rate, reaching ₹ 60,941 crore in 2008-09. Next two years saw the growth somewhat moderating with collections reaching ₹ 70,896 crore in 2010-11.

The buoyancy began once again on the back of some policy initiatives and service tax contributed ₹ 97,444 crore during 2011-12, an increase of nearly 37% over the previous year.

While the revenue expectations were often exceeded in all these years the administrative challenge began to assume unmanageable proportions. The newer additions to the list of services often raised issues of overlaps with the previously existing services, confounding both sides as to whether some activities were taxed for the first time or were already covered under an earlier, even if a little less specific head.

There was also a near unanimity across a wide section of thinkers that potential of service tax remained huge and largely untapped. Part of the problem identified was the lack of comprehensive taxation of services, not so much in the lack of coverage but more on account of lack of clarity and significant gaps in existing definitions, exposing the tax collection process to avoidable leakages and litigation.

Budget 2012 ushered a new system of taxation of services; popularly known as Negative List effective from 01.07.2012. There was a paradigm shift from the earlier system where only services of specified descriptions were subjected to tax. In the new system all services, except those specified in the negative list, are subject to taxation.

2.6 Administration of service tax

The Department of Revenue of the Ministry of Finance exercises control in respect of matters relating to all the direct and indirect taxes through two statutory Boards, namely, the Central Board of Direct Taxes (CBDT) and the Central Board of Excise and Customs (CBEC) respectively. Matters relating to the levy and collection of all the direct taxes (income tax, wealth tax etc.) are looked after by CBDT, whereas those relating to levy and collection of indirect taxes (customs duties, central excise duties etc.) fall within the purview of CBEC. The two Boards were constituted under the Central Board of Revenue Act, 1963.

The responsibility of administration and collection of service tax has also been vested upon the CBEC ('Board'). The Board administers service tax matters through the Central Excise Zones and each Zone, in turn works through Central Excise Commissionerate falling under its territory. Each zone is headed by a Chief/ **Principal** Commissioner of Central Excise, while each Commissionerate is headed by a Commissioner/ **Principal Commissioner** of Central Excise.

The Chief/ **Principal** Commissioner of Zone exercises supervision and control over the

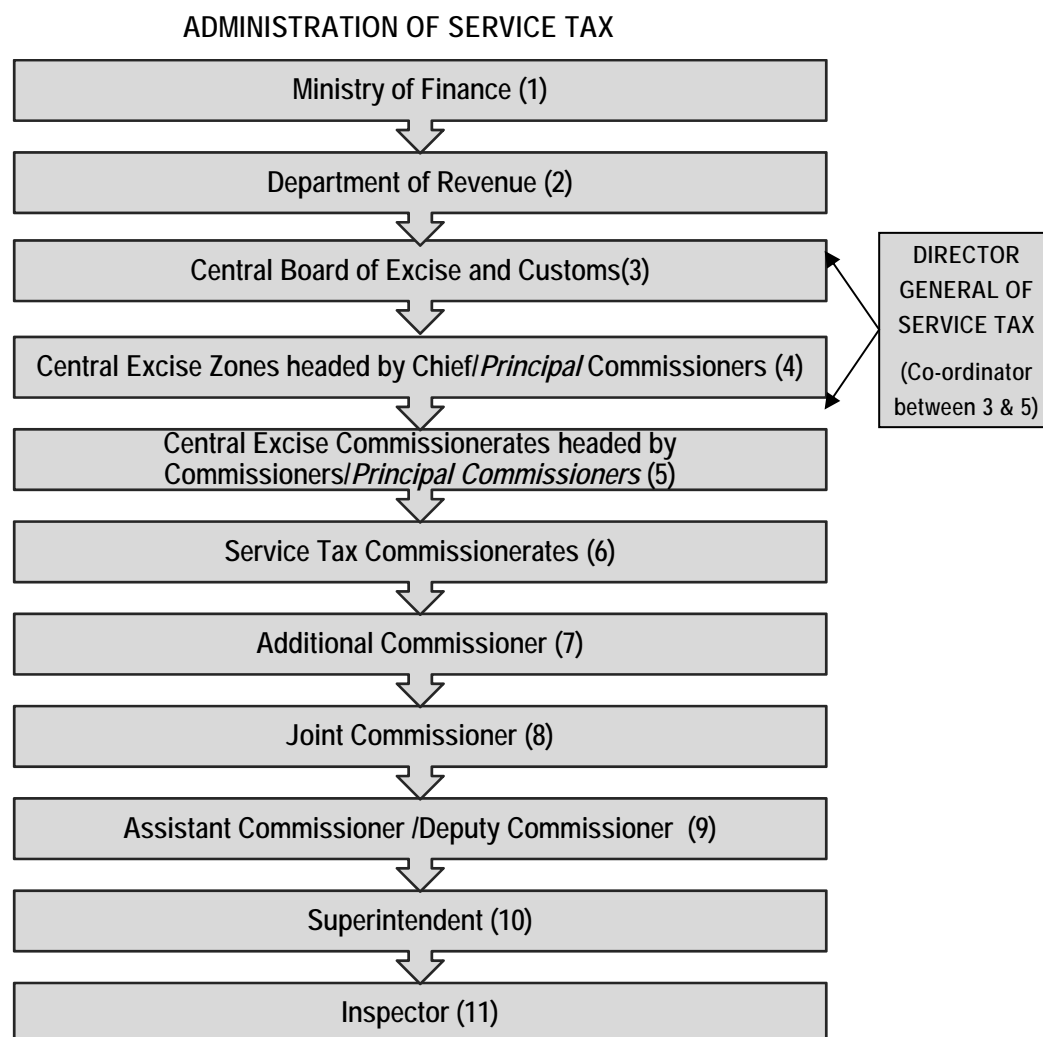
working of the Commissionerates in the Zone and is mainly responsible for monitoring revenue collection, disposal of pendencies, redressal of grievances of trade, etc. He also ensures coordination among the Commissionerates within the Zone.

2.6.1 Director General (Service Tax): Considering the increasing workload due to the expanding coverage of service tax, it was decided to centralise all the work and entrust the same to a separate unit supervised by a very senior official. Accordingly, the office of Director General (Service Tax) was formed in the year 1997. It is headed by the Director General (Service Tax). The functions and powers of Director General (Service Tax) are as follows:

- (1) To ensure that proper establishment and infrastructure has been created under different Central Excise Commissionerates to monitor the collection and assessment of service tax.
- (2) To study the staff requirement at field level for proper and effective implementation of service tax.
- (3) To study as to how the service tax is being implemented in the field and to suggest measures as may be necessary to increase revenue collection or to streamline procedures.
- (4) To undertake study of law and procedures in relation to service tax with a view to simplify the service tax collection and assessment and make suggestions thereon.
- (5) To form a data base regarding the collection of service tax from the date of its inception in 1994 and to monitor the revenue collection from service tax.
- (6) To inspect the service tax cells in the Commissionerate to ensure that they are functioning effectively.
- (7) To undertake any other functions as assigned by the Board from time to time.

The Directorate of Service Tax coordinates between the CBEC and Central Excise Commissionerates. It also monitors the collection and the assessment of service tax. It compiles the service tax revenue reports received from various Central Excise Commissionerates and monitors the performances of the Commissionerates. It scrutinises the correspondences received from field formations and service providers and replies to the clarifications sought for, wherever possible. In cases where the doubts/clarification sought involves policy matter, the Directorate appraises the Board for issuing clarification/instruction.

The administrative machinery of the service tax law can be understood with the help of the following diagram:



2.7 Role of a Chartered Accountant

Since with the introduction of the negative list the gamut of service tax has expanded substantially, there would be a great need for professionals to advice and assist the assesseees. A Chartered Accountant with strong grounding in accounting coupled with his training and experience is well-equipped to position himself in the role as an advisor and facilitator for due compliance of service tax law. The nature of professional services could be:

- (1) **Advisory services:** With the comprehensive coverage of service tax, a great deal of professional acumen would be required to interpret and understand the law and advise the applicability of service tax qua an activity or service. A Chartered Accountant would be able to fill this void.
- (2) **Procedural compliance:** The service tax law envisages registration, payment of tax, filing returns and assessments involving interface with the Excise Department. A

Chartered Accountant with his experience and expertise would be the best person to assist the assessee in all the above functions and ensure compliance.

- (3) **Personal representation:** As per the service tax law read with the Central Excise Act and Rules, a Chartered Accountant is allowed to appear before the assessment authority, Commissioner (Appeals) (first appeal) and Tribunal (second appeal). Here too with his experience and expertise a chartered accountant would be well positioned to represent his clients. When the matter goes up to the High Court or Supreme Court, the Chartered Accountant can assist/ advise the advocates.
- (4) **Certification and audit:** With the widening of tax base there will be a phenomenal growth in the number of service tax assessees. In the ensuing years the department would have to evolve a mechanism where there is management by exception i.e. generally accept all the returns as correct and pick and choose those returns which need detailed scrutiny. In this mechanism a chartered accountant could be of great assistance. Service tax returns and financial statements could be certified by the Chartered Accountant from the perspective of service tax similar to an audit under section 44AB of the Income-tax Act.
- (5) **Onerous task to keep pace:** The service tax like excise is administered more by way of trade notices issued by various Commissionerates. A chartered accountant will have to keep himself abreast of the latest notifications and trade notices in addition to the changes in law so as to meet the client expectations. Thus, in order to render good value added services in the area of service tax a Chartered Accountant has an onerous task to keep pace with the latest in the legal front.

2.8 Extent, Commencement and Application [Section 64]

(1) **Extent & commencement:** The Finance Act, 1994 came into force from 1.7.1994. Vide section 64(1), the provisions of the Act extends to the whole of the country except the State of Jammu and Kashmir, and vide section 64(3), the levy applies to all **“taxable services provided”**. As per Article 370 of the Constitution, any Act of Parliament applies to Jammu & Kashmir only with concurrence of State Government. Since, no such concurrence has been obtained in respect of the Finance Act, 1994; the provisions of service tax are not applicable in the state of Jammu and Kashmir.

(2) **Levy of service tax:** Levy of service tax extends to whole of India except Jammu and Kashmir.

‘India’ means,—

- (a) the territory of the Union as referred to in clauses (2) and (3) of article 1 of the Constitution;
- (b) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976;
- (c) the seabed and the subsoil underlying the territorial waters;

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- (d) the air space above its territory and territorial waters; and
- (e) the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof [Section 65B(27)].

Indian territorial waters extend upto 12 nautical miles from the Indian land mass.

2.9 Definition of service [Section 65B(44)]

Earlier, under the selective approach of taxation of services, the word “service” was nowhere defined in the Finance Act, 1994. In the negative list approach of taxation of services, the definition of service gains paramount importance. In order to determine whether a person is liable to pay service tax, the first question he needs to answer is whether the activity undertaken by him comes within the ambit of definition of “service”. Consequently, section 65B(44) defines the word “service”. For ease of understanding, the definition of service tax may be divided into three sections:-

I. Meaning of service

Service means

- (i) any activity for consideration
- (ii) carried out by a person for another and
- (iii) includes a declared service.

II. Exclusions

However, a service **shall not include**:-

- (a) an activity which constitutes merely,—
 - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
 - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or
 - (iii) a transaction in money or actionable claim;
- (b) a provision of service by an employee to the employer in the course of or in relation to his employment;
- (c) fees taken in any Court or tribunal established under any law for the time being in force.

III. Explanations

Explanation 1: For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,—

- (A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local

authorities who receive any consideration in performing the functions of that office as such member; or

- (B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
- (C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

Explanation 2: For the purposes of this clause, transaction in money shall not include any activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Explanation 3: For the purposes of this Chapter,—

- (a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;
- (b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

Explanation 4: A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory.

Meaning of service

I. ANY ACTIVITY FOR CONSIDERATION

(a) What is an Activity?

The word 'activity' is a term with very wide connotation. It has not been defined in the Finance Act, 1994. However, in terms of the common understanding of the word, activity would include:-

- (i) an act done
- (ii) a work done
- (iii) a deed done
- (iv) an operation carried out
- (v) execution of an act
- (vi) provision of a facility etc.

Activity could be active or passive and would also include forbearance to act. Agreeing to an obligation to refrain from an act or to tolerate an act or a situation has been specifically listed as a declared service under section 66E of the Act.

(b) What is a consideration?

Explanation (a) to section 67 of the Act provides an inclusive definition of consideration. Hence, for better understanding, it would be preferable to refer definition of the 'consideration' as given in section 2(d) of the Indian Contract Act, 1872 as follows-

"When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a **consideration for the promise**".

In other words, 'consideration' means everything received or recoverable in return for a provision of service which includes monetary payment and any consideration of non- monetary nature or deferred consideration as well as recharges between establishments located in a non-taxable territory on one hand and taxable territory on the other hand.

1. **Monetary consideration** means any consideration received in the form of money. **Money** means legal tender, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any such similar instrument but shall not include any currency that is held for its numismatic value.
2. **Non-monetary consideration** essentially means compensation in kind such as the following:
 - Supply of goods and services in return for provision of service
 - Refraining or forbearing to do an act in return for provision of service
 - Tolerating an act or a situation in return for provision of a service
 - Doing or agreeing to do an act in return for provision of service.

Examples of non-monetary consideration are as follows:-

- (a) Rohit agrees to dry clean Shobit's clothes, and in return, Shobit agrees to click Rohit's photograph.
- (b) Sagar agrees not to open dry clean shop in Naresh's neighborhood, and in return, Naresh agrees not to open photography shop in Sagar's neighborhood.
- (c) Pushkar agrees to design Bharat's house, and in return, Bharat agrees not to object to construction of Pushkar's house in his neighborhood.
- (d) Akash agrees to construct 3 flats for Bhola on land owned by Bhola, and in return, Bhola agrees to provide one flat to Akash without any monetary consideration.

(c) Activity for consideration

(i) Implications of the condition that activity should be carried out for a 'consideration':-

- To be taxable, an activity should be carried out by a person for a 'consideration'.

- Activity carried out without any consideration like donations, gifts or free charities are therefore outside the ambit of service. For example, grants given for a research where the researcher is under no obligation to carry out a particular research would not be a consideration for such research.
- An act by a charity for consideration would be a service and taxable unless otherwise exempted.
- Conditions in a grant stipulating merely proper usage of funds and furnishing of account also will not result in making it a provision of service.

(ii) Concept of activity for consideration: The concept 'activity for a consideration' involves an element of contractual relationship wherein the person doing an activity does so at the desire of the person for whom the activity is done in exchange for a consideration.

An activity done without such a relationship i.e. without the express or implied contractual reciprocity of a consideration would not be an 'activity for consideration' even though such an activity may lead to accrual of gains to the person carrying out the activity.

The significant points to be noted in this regard are as follows:-

1. Direct and immediate link between activity and consideration

(i) Direct link: It implies that there should be a direct link and not any casual link between activity and consideration.

- Services received from government against taxes paid not taxable per se, as no direct link is there.
- Free seminar to educate about prudent investment indirectly promoting a mutual fund, in this case also direct link is missing.
- Services received from a club against membership, there is a direct link of making the facilities available for use, whether or not immediately used.

(ii) Immediate connection: It implies that there should be an immediate and not remote connection between activity and consideration. Consideration may actually be payable at a later point of time but linkage should be immediate. For instance, in case an award is received in consideration for life time contribution, there is no immediate connection and hence, it is not taxable e.g. Nobel Prize.

2. Activity not involving contractual reciprocity not included

(i) Activity without consideration not taxable

Examples of an activity without consideration are as follows:-

- Tourism information free of charge
- Access to free TV channels

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- An artist performing on a street where passersby may drop some coins in his bowl kept either after feeling rejoiced or out of compassion
- Large number of governmental activities for citizens

(ii) Consideration without activity not taxable

Examples of consideration without an activity are as follows:-

- Personal obligations e.g. pocket money
- Amount paid as alimony for divorce
- Donations without conditions
- Pure gifts
- Tips and ex-gratia payments

3. **Consideration for service may be paid by a person other than the person receiving the benefit of the service:** The consideration for a service may be provided by a person other than the person receiving the benefit of service as long as there is a link between the provision of service and the consideration.

For example, holding company may pay for services that are provided to its associated companies.

Whether following payments constitute a consideration for provision of service?

S.No.	Nature of payment	Whether it is consideration for service?
1.	Imposition of a fine or a penalty for violation of a provision of law. Is fine or penalty the consideration for the activity of breaking the law?	In order to be service, an activity has to be carried out for a consideration. Therefore fines and penalties which are legal consequences of a person's actions are not in the nature of consideration for an activity.
2.	Amount received in settlement of dispute.	Would depend on the nature of dispute. Per se such amounts are not consideration unless it represents a portion of the consideration for an activity that has been carried out. If the dispute itself pertains to consideration relating to service then it would be a part of consideration.
3.	Amount received as advances for performance of service.	Such advances are consideration for the agreement to perform a service.
4.	Deposits returned on cancellation of an agreement to provide a service.	Returned deposits are in the nature of a returned consideration. If tax has already been paid the tax payer would be entitled to refund to the extent specified and subject to provisions of law in this regard.

5.	Advance forfeited for cancellation of an agreement to provide a service.	Since service becomes taxable on an agreement to provide a service such forfeited deposits would represent consideration for the agreement that was entered into for provision of service.
6.	Security deposit that is returnable on completion of provision of service.	Returnable deposit is in the nature of security and hence do not represent consideration for service. However if the deposit is in the nature of a colorable device wherein the interest on the deposit substitutes for the consideration for service provided or the interest earned has a perceptible impact on the consideration charged for service then such interest would form part of gross amount received for the service. Also security deposit should not be in lieu of advance payment for the service.
7.	Security deposits forfeited for damages done by service receiver in the course of receiving a service.	If the forfeited deposits relate to accidental damages due to unforeseen actions not relatable to provision of service then such forfeited deposits would not be a consideration in terms of clause (vi) of sub-rule (2) of rule 6 of the Valuation Rules.
8.	Excess payment made as a result of a mistake	If returned it is not consideration. If not returned and retained by the service provider it becomes a part of the taxable value.
9.	Demurrages payable for use of services beyond the period initially agreed upon e.g. retention of containers beyond the normal period.	This will be consideration.

II. ACTIVITY MUST BE CARRIED OUT BY A PERSON FOR ANOTHER

The phrase 'provided by one person to another' signifies that there must be two distinct entities-service provider and service receiver. Hence, services provided by a person to self are outside the ambit of taxable service. For instance, services provided by one branch of a company to another or to its head office or vice-versa are not services provided by one person to another.

Person includes,—

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a society,
- (v) a limited liability partnership,
- (vi) a firm,
- (vii) an association of persons or body of individuals, whether incorporated or not,
- (viii) Government,
- (ix) a local authority, or
- (x) every artificial juridical person, not falling within any of the preceding sub-clauses [Section 65B(37)].

Exceptions

General rule - Only services provided by a person to another are taxable. Explanation 3 carves out two exceptions to the general rule:-

- an establishment of a person located in taxable territory and another establishment of such person located in non-taxable territory are treated as establishments of distinct persons.
- an unincorporated association or body of persons and members thereof are also treated as distinct persons.

Hence, such persons shall be deemed to be separate persons and thus, services provided by these persons would be taxable.

For example, services provided by a club to its members and services provided by the branch office of a multinational company to the headquarters of the multi-national company located outside India would be taxable provided other conditions relating to taxability of service are satisfied.

III. SERVICE INCLUDES DECLARED SERVICE

The provisions relating to declared service will be discussed at the Final level in Paper 8: Indirect Tax Laws.

Exclusions

Exclusions from definition of service

Immovable property
Movable property
Actionable claims
Goods
Employee

- (i) **Clause (a)(i) of exclusions:** Activity to be taxable should not constitute only a transfer in title of goods or immovable property by way of sale, gift or in any other manner

Mere transfer of title in goods or immovable property by way of sale, gift or in any other manner for a consideration does not constitute service. However, a transaction which in addition to a transfer of title in goods or immovable property involves an element of another activity carried out or to be carried out by the person transferring the title would not be outrightly excluded from the definition of service.

Goods means every kind of movable property other than actionable claim and money; and includes securities, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale [Section 65B(25)].

Immovable property has not been defined in the Act. Therefore the definition of immovable property in the General Clauses Act, 1897 will be applicable which defines immovable property to include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.

- (ii) **Clause (a)(ii) of exclusions:** Activity to be taxable should not constitute merely a transfer, delivery or supply of goods which is deemed to be a sale of goods within the meaning of clause (29A) of article 366 of the Constitution*

It may be noted that although the transfer of title by way of sale of goods is already excluded under clause (i) above, deemed sales have been excluded specifically by this clause. The reason for the same is that some categories of deemed sales do not involve transfer of title in goods like transfer of goods on hire-purchase or transfer of right to use goods. Accordingly, deemed sales have been specifically excluded.

* The six categories of deemed sales as defined in article 366(29A) have been discussed in details in Unit 4: Central Sales tax.

(iii) Clause (a)(iii) of exclusions: Transactions only in money or actionable claims do not constitute service

Clause (a)(iii) of exclusions has to be read in conjunction with Explanation 2.

Explanation 2 clarifies that for the purposes of this clause, transaction in money shall not include any activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

The implications of this explanation are that while mere transactions in money are outside the ambit of service, any activity related to a transaction in money by way of its use or conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination would not be treated as a transaction in money if a separate consideration is charged for such an activity. While the transaction in money, per-se, would be outside the ambit of service the related activity, for which a separate consideration is charged, would not be treated as a transaction of money and would be chargeable to service tax if other elements of taxability are present. For example, a foreign exchange dealer while exchanging one currency for another also charges a commission (often inbuilt in the difference between the purchase price and selling price of forex). The activity of exchange of currency, per-se, would be a transaction only in money, the related activity of providing the services of conversion of forex, documentation and other services for which a commission is charged separately or built in the margins would be very much a 'service'.

Whether the following transactions come under 'transaction only in money'?

S.No.	Nature of transactions	Whether come under transaction only in money?
1.	Making of a draft or a pay order by a bank be a transaction	No. Since the bank charges a commission for preparation of a bank draft or a pay order it is not a transaction only in money. However, for a draft or a pay order made by bank the service provided would be only to the extent of commission charged for the bank draft or pay order. The money received for the face value of such instrument would not be consideration for a service since to the extent of face value of the instrument it is only a transaction in money.
2.	An investment	Investment of funds by a person with another for which the return on such investment is returned or repatriated to the investors without retaining any portion of the return on such investment of funds is a transaction only in money. Thus a partner being admitted in a partnership against his share will be a transaction in money. However, if a commission is charged or a portion of the return is retained as service charges, then such commission or portion of return is out of the purview of transaction only in

		money and hence taxable. Also, if a service is received in lieu of an investment it would cease to be a transaction only in money to the extent the investment represents the consideration for the service received.
3.	Debt collection services or credit control services	No. Such services provided for consideration are taxable.
4.	Sale, purchase, acquisition or assignment of a secured debt like a mortgage	Yes. However, if a service fee or processing fee or any other charge is collected in the course of transfer or assignment of a debt then the same would be chargeable to service tax.
5.	Remittance of foreign currency in India from overseas	Yes. Remittance of foreign currency in India from overseas is a transaction in money

Money means legal tender, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any such similar instrument but shall not include any currency that is held for its numismatic value [Section 65B(33)].

Actionable claim means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent [Section 65B(1)].

Illustrations of actionable claims are -

--Unsecured debts

--Right to participate in the draw to be held in a lottery.

(iv) **Clause (b) of exclusions:** Provision of service by an employee to the employer is outside the ambit of service

Not all services provided by an employee to the employer are outside the ambit of services. **Only services that are provided by the employee to the employer in the course of employment are outside the ambit of services.** Services provided outside the ambit of employment for a consideration would be a service. For example, if an

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employee provides his services on contract basis to an associate company of the employer, then this would be treated as provision of service.

Whether the following be regarded as services in course of employment

S.No.	Nature of services	Whether regarded as services in course of employment
1.	Services provided on contract basis by a person to another	No. Services provided on contract basis i.e. principal-to-principal basis are not services provided in the course of employment.
2.	Services provided by a casual worker to employer who gives wages on daily basis to the worker.	Yes. These are services provided by the worker in the course of employment.
3.	In case the casual workers are employed by a contractor, like a building contractor or security agency services, who deploys them for execution of a contract or for provision of security services to a client.	Yes. Services provided by the worker to the contractors are in the course of employment. However, services provided by the contractor to his client by deploying such workers would not be a service provided by the workers to the client in the course of employment. The consideration received by the contractor would therefore be taxable if other conditions of taxability are present.

Explanations

Explanation 1 clarifies that 'service' does not cover functions or duties performed by Members of Parliament, State Legislatures, Panchayat, Municipalities or any other local authority, any person who holds any post in pursuance of the provisions of the Constitution or any person as a Chairperson or a Member or a Director in a body established by the Central or State Governments or local authority and who is not deemed as an employee.

Explanation 2 & 3 have already been discussed at the relevant places.

Explanation 4 explains that a branch or an agency of a person through which the person carries out business is also an establishment of such person.

2.10 Charge of Service Tax [Section 66B]

Section 66B is the charging section of the Act, which provides that there shall be levied a tax (hereinafter referred to as the service tax) at the rate of 12% on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed. The effective rate of service tax is 12%; plus education cess of 2% and secondary & higher education cess of 1%.

(a) **Provided or agreed to be provided:** The implications of this phrase are –

- Services which have only been agreed to be provided but are yet to be provided are also taxable.
- Receipt of advances for services agreed to be provided become taxable before the actual provision of service.
- Advances that are retained by the service provider in the event of cancellation of contract of service by the service receiver become taxable as these represent consideration for a service that was agreed to be provided.

However, it is important to note that the liability to pay the service tax on a taxable service arise the moment it is agreed to be provided without actual provision of service. The liability to pay tax arises in such cases at the point of taxation which is determined as per the Point of Taxation Rules, 2011 (discussed in detail in Chapter 3).

(b) **Provided in the taxable territory:** The service must have been provided in the taxable territory.

Taxable territory means the territory to which the provisions of this Chapter apply i.e. the whole of territory of India other than the State of Jammu and Kashmir [Section 65(51)].

(c) **Service should not be specified in the negative list:** As per section 66B, to be taxable a service should not be specified in the negative list. The negative list of services has been specified in section 66D of the Act.

2.11 Education Cess and Secondary and Higher Education Cess

(a) **Education cess (EC):** An education cess is levied @ 2%, calculated on the service tax on all taxable services. The education cess so collected is utilized for providing and financing universalized quality basic education.

(b) **Secondary and higher education cess (SHEC):** Further, a secondary and higher education cess @ 1% is also being imposed on services liable to service tax.

Thus, the effective rate of service tax becomes 12.36%.

Points to be noted regarding EC & SHEC

- Service tax, education cess and secondary and higher education cess should be shown separately in the invoice.
- These cesses paid on input services are available as credit for payment of cesses on output services or final products.
- The education cess and secondary and higher education cess on taxable services are in addition to the tax chargeable on such taxable services, under Chapter V of the Finance Act, 1994.
- The provisions of Chapter V of the Finance Act, 1994 and the rules made thereunder, including those relating to refunds and exemptions from tax and imposition of penalty,

apply in relation to the levy and collection of the education cess and secondary and higher education cess also, as they apply in relation to the levy and collection of tax on such taxable services.

- (e) In case of a partial exemption, say by way of abatement, the cesses would be calculated on the net tax paid and not on the entire amount of tax that would have been payable.

2.12 Negative list of services [Section 66D]

The charging section 66B of the Finance Act, 1994, *inter alia*, provides that service tax shall be levied on all services, except the services specified in the negative list. Accordingly, section 66D of the Act has specified the list of services consisting of 17 heads of services which is termed as 'Negative List'. In a comprehensive tax regime, this 'Negative List' is of paramount importance because every activity not covered under this list is chargeable to service tax.

The negative list shall comprise of the following services, namely:—

- (a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—
 - (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government;
 - (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
 - (iii) transport of goods or passengers; or
 - (iv) support services, other than services covered under clauses (i) to (iii) above, provided to business entities;
- (b) services by the Reserve Bank of India;
- (c) services by a foreign diplomatic mission located in India;
- (d) services relating to agriculture or agricultural produce by way of—
 - (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;
 - (ii) supply of farm labour;
 - (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
 - (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
 - (v) loading, unloading, packing, storage or warehousing of agricultural produce;
 - (vi) agricultural extension services;

- (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;
- (e) trading of goods;
- (f) any process amounting to manufacture or production of goods;
- (g) *selling of space for advertisements in print media;***
- (h) service by way of access to a road or a bridge on payment of toll charges;
- (i) betting, gambling or lottery;
- (j) admission to entertainment events or access to amusement facilities;
- (k) transmission or distribution of electricity by an electricity transmission or distribution utility;
- (l) services by way of—
 - (i) pre-school education and education up to higher secondary school or equivalent;
 - (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
 - (iii) education as a part of an approved vocational education course;
- (m) services by way of renting of residential dwelling for use as residence;
- (n) services by way of—
 - (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
 - (ii) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers;
- (o) service of transportation of passengers, with or without accompanied belongings, by—
 - (i) a stage carriage;
 - (ii) railways in a class other than—
 - (A) first class; or
 - (B) an airconditioned coach;
 - (iii) metro, monorail or tramway;
 - (iv) inland waterways;
 - (v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and
 - (vi) metered cabs or auto rickshaws;
- (p) services by way of transportation of goods—
 - (i) by road except the services of—

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- (A) a goods transportation agency; or
- (B) a courier agency;
- (ii) by an aircraft or a vessel from a place outside India up to the customs station of clearance in India; or
- (iii) by inland waterways;
- (q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

ANALYSIS: Analysis of each of the entries of negative list in detail is given below:-

1. Entry (a): Services by Government or Local Authority, entry (o): Transportation of passengers & entry (p): Transportation of goods
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All the services provided by the Government or a local authority are not chargeable to service tax.

Government: Government has nowhere been defined in the Finance Act, 1994 or the rules made thereunder. As per General Clauses Act, 1897,

Government shall include both the Central Government and any State Government [Section 3(23) of the General Clauses Act, 1897].

It would include various departments and offices of the Central or State Government or the Union Territory Administrations which carry out their functions in the name and by order of the President of India or the Governor of a State.

Local authority means—

- (a) Panchayat as referred to in clause (d) of article 243 of the Constitution.
- (b) Municipality as referred to in clause (e) of article 243P of the Constitution.
- (c) Municipal Committee and a District Board, legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund.
- (d) Cantonment Board as defined in section 3 of the Cantonments Act, 2006.
- (e) Regional council or a district council constituted under the Sixth Schedule to the Constitution.
- (f) Development board constituted under article 371 of the Constitution.
- (g) Regional council constituted under article 371A of the Constitution [Section 65B(31)].

Exceptions: However, the following services, even if provided by the Government or local authority, are taxable:-

- (i) Services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government;

- (ii) Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (iii) Transport of goods or passengers; or
- (iv) Support services, other than services covered under clauses (i) to (iii) above, provided to business entities.

Rationale behind taxing certain activities of the Government or local authorities

Only those activities of Government or local authorities are taxed where similar or substitutable services are provided by private entities. The rationale is as follows-

- to provide a level playing field to private entities in these areas as exemption to Government in such activities would lead to competitive inequities; and
- to avoid break in CENVAT chain as the support services provided by Government are normally in the nature of intermediary services.

I. SERVICES BY THE DEPARTMENT OF POSTS PROVIDED TO A PERSON OTHER THAN GOVERNMENT

Following services provided to a person other than Government, by the Department of Posts are taxable:-

- (a) **Speed post:** provides time-bound and express delivery of letters, documents and parcels across the nation and around the world. Now-days, speed posts can be tracked on a daily basis with the help of speed post tracking service started by Postal Department of India.
- (b) **Express parcel post:** Express Parcel Post is fast and reliable service for sending the parcels upto 35 kg within India. It provides convenience to the customers by picking up from customer's premises and delivering to consignee.
- (c) **Life insurance:** Post offices offer insurance under two schemes:
 - (a) Postal Life Insurance
 - (b) Rural Postal Life Insurance.
- (d) **Agency services:** includes distribution of mutual funds, bonds, passport applications, collection of telephone and electricity bills, which are provided by the Department of Posts to non-Government entities.

Services provided by Department of Posts NOT liable to service tax: Therefore, the following services provided by Department of Posts are not liable to service tax:-

- Basic mail services known as postal services such as post card, inland letter, book post, registered post provided exclusively by the Department of Posts to meet the universal postal obligations.
- Transfer of money through money orders, operation of savings accounts, issue of postal orders, pension payments and other such services.

II. SERVICES IN RELATION TO AN AIRCRAFT OR A VESSEL, INSIDE OR OUTSIDE THE PRECINCTS OF A PORT OR AN AIRPORT

Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport provided by Government or local authority are taxable.

1. **Aircraft** means any machine which can derive support in the atmosphere from reactions of the air, other than reactions of the air against the earth's surface and includes balloons, whether fixed or free, airships, kites, gliders and flying machines [Section 65B(7)].
2. **Airport** means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes aerodrome**[Section 65B(8)].
****Aerodrome** means any definite or limited ground or water area intended to be used, either wholly or in part, for the landing or departure of aircraft, and includes all buildings, sheds, vessels, piers and other structures thereon or appertaining thereto.
3. As per section 65B(38), **port** covers two types of ports:-
 - (i) **Major ports** as defined under section 2(q) of the Major Port Trusts Act, 1963:
Port means any major port to which this Act applies within such limits as may, from time to time, be defined by the Central Government for the purposes of this Act by notification in the Official Gazette, and, until a notification is so issued, within such limits as may have been defined by the Central Government under the provisions of the Indian Ports Act.
 - (ii) **Other ports** as defined under section 3(4) of the Indian Ports Act, 1908
Port includes also any part of a river or channel in which this Act is for the time being in force.
4. **Vessel** includes anything made for the conveyance, mainly by water, of human beings or of goods and a caisson [Section 65B(53)].

III. TRANSPORT OF GOODS OR PASSENGERS

Services of transport of passengers and goods have been specifically dealt with in clause (o) and (p). Here we are discussing the complete taxability of transport of passengers and goods. As a result of the combined study of the clause (o), (p) and this part of entry (a), the taxability of transport of passengers and goods is under:-

A. Transport of passengers

Transport of passengers by Government or local authority is generally taxable. However, following services of transportation of passengers, (whether provided by Government or otherwise) with or without accompanied belongings **are not taxable**:-

- (i) **Transport of passengers by a stage carriage:** Vehicles which can carry more than six passengers shall be included here. In other words, carriages running under public transport shall not be taxable.

It may be noted that transport of passengers by vehicles under contract carriage is outside the purview of this entry. However, specific exemption under mega exemption notification (discussed in Chapter -5) is available to services of transport of passengers by a contract carriage for transportation of passengers, excluding tourism, conducted tours, charter or hire.

Stage carriage means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey [Section 65B(46)].

(ii) **Transport of passengers by railways in a class other than—**

- (A) first class; or
- (B) an air conditioned coach

Thus, journey by rail in 2nd class, sleeper class or general class is not taxable.

Transport of passengers in railways in first class or an air conditioned coach is taxable.

(iii) **Transport of passengers by metro, monorail or tramway:** Transport of passengers by metro, monorail or tramway is not taxable.

(iv) **Transport of passengers by inland waterways**

Inland waterways means:-

- (i) **National waterways** as defined in section 2(h) of the Inland Waterways Authority of India Act, 1985, or
- (ii) **Other waterway on any inland water** as defined in section 2(b) of the Inland Vessels Act, 1917 [Section 65B(29)].

As per section 2(h) of the Inland Waterways Authority of India Act, 1985,

National waterway means the inland waterway declared by section 2 of the National Waterway (Allahabad-Haldia Stretch of the Ganga-Bhagirathi-Hooghly River) Act, 1982, to be a national waterway.

Explanation—If Parliament declares by law any other waterway to be a national waterway, then from the date on which such declaration takes effect, such other waterway—

- (i) shall be deemed also to be a national waterway within the meaning of this clause; and
- (ii) the provisions of this Act shall, with necessary modifications (including modification for construing any reference to the commencement of this Act as a reference to the date aforesaid), apply to such national waterway.

As per section 2(b) of the Inland Vessels Act, 1917,

Inland water means any canal, river, lake or other navigable water.

- (v) **Transport of passengers by public transport, other than predominantly for tourism purpose, in a vessel between places located in India:** The words 'other than predominantly for tourism purpose' qualify the preceding words "public transport". This implies that the public transport by a vessel should not be predominantly for tourism purposes. Normal public ships or other vessels that sail between places located in India would be covered in the negative list entry even if some of the passengers on board are using the service for tourism as predominantly, such service is not for tourism purpose. However, services provided by leisure or charter vessels or a cruise ship, predominant purpose of which is tourism, would not be covered in the negative list even if some of the passengers in such vessels are not tourists.

For instance, services by way of transportation of passengers on a vessel, from Kolkata to Port Blair (mainland – island) or Port Blair to Rose Island (inter island), is covered in the negative list entry.

- (vi) **Metered cabs or auto rickshaws:** Metered cab means any contract carriage on which an automatic device, of the type and make approved under the relevant rules by the State Transport Authority, is fitted which indicates reading of the fare chargeable at any moment and that is charged accordingly under the conditions of its permit issued under the Motor Vehicles Act, 1988 and the rules made thereunder *but does not include radio taxi* [Section 65B(32)].

B. Transportation of goods

Transport of goods by Government or local authority is generally taxable. However, following services of transportation of goods, (whether provided by Government or otherwise) **are not taxable**:—

- (i) **Services by way of transportation of goods by road except the services of—**

- (A) a goods transportation agency; or
- (B) a courier agency

Transportation of goods by road is not taxable. However, services of goods transportation agency and courier agency services are excluded from the negative list entry relating to transportation of goods by road thereby making these two services taxable.

(A) **Goods transportation agency services:** When the goods are transported by road by a goods transport agency, it is liable to tax. Further, the provisions relating to reverse charge, i.e. service tax is liable to be paid by the consigner or consignee in specified cases, are applicable even after the introduction of negative list.

Goods transport agency means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called [Section 65B(26)].

- (B) **Courier agency:** Courier agency services are liable to service tax.

Express cargo service: The nature of service provided by 'Express Cargo Service' falls within the scope and definition of the courier agency. Hence, the said service is liable to service tax.

Angadia: 'Angadia' undertakes delivery of documents, goods or articles received from a customer to another person for a consideration. Therefore, 'angadias' are covered within the definition of a 'courier' and services provided by angadia are liable to service tax.

Courier agency means any person engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles [Section 65B(20)].

- (ii) **Services by way of transportation of goods by an aircraft or a vessel from a place outside India up to the customs station of clearance in India:** Transportation of goods either by air or by sea for outside India upto custom station of clearance in India is not taxable.

1. **Aircraft** means any machine which can derive support in the atmosphere from reactions of the air, other than reactions of the air against the earth's surface and includes balloons, whether fixed or free, airships, kites, gliders and flying machines [Section 65B(7)].
2. **Vessel** includes anything made for the conveyance, mainly by water, of human beings or of goods and a caisson [Section 65B(53)].
3. **Customs station** means any customs port, customs airport or land customs station [Section 65B(21)].

- (iii) **Services by way of transportation of goods by inland waterways:** Almost any water transport within India would be covered under the negative entry for transportation of goods by inland waterways.

IV. SUPPORT SERVICES, OTHER THAN SERVICES COVERED UNDER CLAUSES I. TO III. ABOVE, PROVIDED TO BUSINESS ENTITIES

Other support services provided by the Government or a local authority to the business entities are taxable services.

1. **Business entity** means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession [Section 65B(17)].
2. **Support services** means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves, but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis [Section 65B(49)].

2. Entry (b): Services provided by Reserve Bank of India

All the services by the Reserve Bank of India gets covered in the negative list, and become non taxable.

Accordingly, the services provided by banks to RBI would be taxable as these are neither in the negative list nor covered in any of the exemptions.

***Note:** Any services **PROVIDED TO** the Reserve Bank of India are **NOT** included in the negative list and would be taxable subject to any exemption granted to them.¹*

3. Entry (c): Services by a Foreign Diplomatic Mission located in India

All the services rendered by a foreign diplomatic mission located in India are not chargeable to service tax. This entry does not cover services, if any, provided by any office or establishment of an international organization.

4. Entry (d): Services relating to agriculture or agricultural produce

Following services relating to agriculture or agricultural produce are not taxable-

(i) **Agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing**

- Activities like breeding of fish (pisciculture), rearing of silk worms (sericulture), cultivation of ornamental flowers (floriculture) and horticulture, forestry are included in the definition of agriculture.
- Plantation crops like rubber, tea or coffee would be also covered under agricultural produce.
- The processes contemplated in the definition of agricultural produce are those as are '**usually done by the cultivator or producer**'. Thus agricultural products like cereals, pulses, copra and jaggery where certain amount of processing on these products is done by a person other than a cultivator or producer may not get covered in the ambit of 'agricultural produce'.

1. **Agriculture** means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products [Section 65B(3)].
2. **Agricultural produce** means any produce of agriculture on which either no further processing is done or such processing is done as is **usually done by a cultivator or producer** which does not alter its essential characteristics but makes it marketable for primary market [Section 65B(5)].

¹ Exemptions have been discussed in Chapter 5: Exemptions and Abatements

Circular No.177/03/2014 ST dated 17.02.2014 has clarified that the above definition of agricultural produce covers 'paddy'; but excludes 'rice'. It implies that benefits available to agricultural produce in the negative list are not available to rice.

- (ii) **Supply of farm labour:** The service provider who is providing the desired farm labour to the service receiver is not liable to pay service tax on the said services.
- (iii) **Processes which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market:** The processes carried out at an agricultural farm including tending, pruning, cutting, harvesting; drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market are not taxable. However, following processes are taxable:-
 - (a) **Process which alters the essential characteristics of the agricultural produce:** Potato chips or tomato ketchup does not qualify as agricultural produce because in terms of the definition of agricultural produce, only such processing should be carried out as is usually done by cultivator producers **which does not alter its essential characteristics** but makes it marketable for primary market. Potato chips or tomato ketchup are manufactured through processes which alter the essential characteristic of farm produce (potatoes and tomatoes in this case).
 - (b) **Process which makes agricultural produce marketable in the retail market:** The processes of grinding, sterilizing, extraction packaging in retail packs of agricultural products, which make the agricultural products marketable in retail market, would NOT be covered in the negative list. Only such processes are covered in the negative list which makes agricultural produce marketable in the primary market.
- (iv) **Renting or leasing of agro machinery or vacant land with or without a structure incidental to its use:** Leasing of vacant land with a green house or a storage shed which is incidental to its use for agriculture would be covered in the negative list.
- (v) **Loading, unloading, packing, storage or warehousing of agricultural produce**
- (vi) **Agricultural extension services:** Agricultural extension means application of scientific research and knowledge to agricultural practices through farmer education or training [Section 65B(4)].
- (vii) **Services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce:** Agricultural Produce Marketing Committees or Boards are set up under a State Law for purpose of regulating the marketing of agricultural produce. Such marketing committees or boards have been set up in most of the States and provide a variety of support services for facilitating the marketing of agricultural produce by provision of facilities and amenities like, sheds, water, light, electricity, grading facilities etc. They also take

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measures for prevention of sale or purchase of agricultural produce below the minimum support price. APMCs collect market fees, license fees, rents etc. Services provided by such Agricultural Produce Marketing Committee or Board are covered in the negative list. However, any service provided by such bodies which is not directly related to agriculture or agricultural produce will be liable to tax e.g. renting of shops or other property.

Service provided by commission agent for sale or purchase of agricultural produce are also covered under the negative list entry.

5. Entry (e): Trading of goods

The above entry refers to the activity of trading of goods.

Thus, the check has to be twofold –

- (1) the activity should be of trading and
- (2) trading should be of goods.

Whether the following would be covered under trading of goods?

- (a) **Forward contracts in commodities:** Forward contracts would be covered under trading of goods as these are contracts which involve transfer of title in goods on a future date at a pre-determined price.
- (b) **Commodity futures:** Commodity futures would be covered under trading of goods. In commodity futures actual delivery of goods does not normally take place and the purchaser under a futures contract normally offset all obligations or closes out by selling an equal quantity of goods of the same description under another contract for delivery on the same date. These are in the nature of derivatives.
- (c) **Auxiliary services relating to future contracts or commodity futures:** Such services provided by commodity exchanges clearing houses or agents would not be covered in the negative list entry relating to trading of goods.

Note: It is relevant to note here that in common parlance whenever the term 'trading' is used, it is considered as 'trading in goods'. The term 'trading of service' seems to be little uncommon to use but these kind of activities commonly takes place where a person procures services from one person and provides to another, practically such transactions most of the times get recognised as commission agent's services though may not be strictly commission based.

Goods means every kind of movable property other than actionable claim and money; and includes securities, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale [Section 65B(25)].

Securities include —

- (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

- (ia) derivative;
- (ib) Units or any other instrument issued by any collective investment scheme to the investors in such schemes;
- (ii) Government securities;
- (ia) such other instruments as may be declared by the central Government to be Securities; and
- (iii) rights or interest in securities [Section 65B(43)].

6. Entry (f): Processes amounting to manufacture or production of goods

Any process amounting to manufacture or production of goods shall not be taxable.

Points to be noted

- This entry covers **manufacturing activity carried out on contract or job work basis**, which does not involve transfer of title in goods, **provided** duties of excise are leviable on such processes under the Central Excise Act, 1944, the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 or any of the State Acts.
- In other words, if Central Excise duty is leviable on a particular process, as the same amounts to manufacture, then such process would be covered in the negative list even if there is a central excise duty exemption for such process.
- However if central excise duty is wrongly paid on a certain process which does not amount to manufacture, with or without an intended benefit, it will not save the process on this ground and service tax would still be leviable on such process.

Process amounting to manufacture or production of goods means

- (i) a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 or the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 or
- (ii) any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act for the time being in force [Section 65B(40)].

7. Entry (g): Selling of space for advertisements in print media

The service tax levy extends to advertisement in all media except print media. In other words, the levy extends to other segments like online and mobile advertising, advertisements on internet websites, out-of-home media, on film screen in theatres, bill boards, conveyances, buildings, cell phones, automated teller machines, commercial publications, aerial advertising, etc.

"Print media" means,—

- (i) *"book" as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867, but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes;*

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(ii) *"newspaper" as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 [Section 65B(39a)].*

Thus, sale of space for advertisements in business directories, yellow pages and trade catalogues would attract service tax.

*Aerial advertising is a form of advertising that incorporates the use of aircraft, balloons or airships to create, transport, or display, advertising media. The media can be static, such as a banner, logo, lighted sign or sponsorship branding. It can also be dynamic, such as animated, lighted or audio.

Advertisement means any form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person [Section 65B(2)].

Points to be noted

- **Making or preparing advertisements:** Services provided by advertisement agencies relating to making or preparation of advertisements would not be covered in this entry and thus, would be taxable. This would also not cover commissions received by advertisement agencies from the broadcasting or publishing companies for facilitating business, which may also include some portion for the preparation of advertisement.
- **Canvassing advertisement for publishing on a commission basis:** Merely canvassing advertisement for publishing on a commission basis by persons/agencies is not covered in the negative list entry and is taxable.

8. Entry (h): Access to a road or a bridge on payment of toll charges

This entry covers the services of providing access to road and charging toll charges. National highways or state highways are also roads and hence covered in this entry.

9. Entry (i): Betting, gambling or lottery

Services of betting, gambling or lottery are included in this entry.

Betting or gambling means putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring [Section 65B(15)].

10. Entry (j): Entry to entertainment events and access to amusement facilities

Following two services are not taxable:-

- Entry to entertainment events
- Access to amusement facilities

Points to be noted

- Cultural programme, drama or a ballet held in an open garden and not in a theatre

qualifies as an entertainment event: The words used in the definition are 'theatrical performances' and not 'performances in theatres'. A cultural programme, drama or a ballet performed in the open does not cease to be a theatrical performance provided it is performed in the manner it is performed in a theatre, i.e. before an audience.

- **Standalone ride set up in a mall qualifies as an amusement facility:** A standalone amusement ride in a mall is also a facility in which fun or recreation is provided by means of a ride. Access to such amusement ride on payment of charges would be covered in the negative list.
- **Entry to video parlors exhibiting movies played on a DVD player and displayed through a TV screen is covered in the entry:** Entry to video parlors exhibiting movies played on a DVD player and displayed through a TV screen is covered in the entry because such exhibition is an exhibition of cinematographic film.
- **Membership of a club DOES NOT qualify as access to an amusement facility:** A club does not fall in the definition of an amusement facility. Hence, membership of a club does not mean access to an amusement facility.

1. **Entertainment event** means an event or a performance which is intended to provide recreation, pastime, fun or enjoyment, by way of exhibition of cinematographic film, circus, concerts, sporting event, pageants, award functions, dance, musical or **theatrical performances** including drama, ballets or any such event or programme [Section 65B(24)].
2. **Amusement facility** means a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other places but does not include a place within such facility where other services are provided [Section 65B(9)].

11. Entry (k): Transmission or distribution of electricity

The above entry covers the services of transmission or distribution of electricity by an electricity transmission or distribution utility.

Electricity transmission or distribution utility means

- the Central Electricity Authority
- a State Electricity Board
- the Central Transmission Utility
- a State Transmission Utility notified under the Electricity Act, 2003
- a distribution or transmission licensee
- any other entity entrusted with such function by the Central or State Government [Section 65B(23)].

12. Entry (I): Specified services relating to education

The following services relating to education are specified in the negative list –:-

- (i) Pre-school education and education up to higher secondary school or equivalent;
 - (ii) Education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
 - (iii) Education as a part of an approved vocational education course.
- (i) Pre-school education and education up to higher secondary school or equivalent**
1. Services provided by **international schools** giving certifications like IB (International Baccalaureate) are also covered in this entry.
 2. **Private tuitions** are NOT covered in this entry. Hence, they are also liable to pay service tax if their aggregate values of taxable services exceed the threshold exemption.
- (ii) Education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force**
- (a) In order to be covered in the negative list, a course should be recognized by an Indian law. Services provided by way of education as a part of a prescribed curriculum for obtaining a **qualification recognized by a law of a foreign country** are **NOT** covered in the negative list entry.
 - (b) Services of conducting admission tests for admission to colleges are exempt in case the educational institutions are providing qualification recognized by law for the time being in force.

Education as a part of curriculum for obtaining a qualification recognized by law means that only such educational services are in the negative list as are related to delivery of education as 'a part' of the curriculum that has been prescribed for obtaining a qualification prescribed by law. It is important to understand that to be in the negative list the service should be delivered as part of curriculum. Conduct of degree courses by colleges, universities or institutions which lead grant of qualifications recognized by law would be covered. Training given by private coaching institutes would not be covered as such training does not lead to grant of a recognized qualification.

(iii) Education as a part of an approved vocational education course

Approved vocational education course means,—

- (i) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training or State Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961; or
- (ii) a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Employment and Training, Union Ministry of Labour and Employment [Section 65B(11)].

Note: Educational institutes such as IITs, IIMs charge a fee from prospective employers like corporate houses/ MNCs, who come to the institutes for recruiting candidates through campus interviews. Service tax is liable on services provided by such institutions in relation to campus recruitment as such services are not covered in the negative list.

Vocational education course offered by Institutions as independent entities: Service tax is not leviable on vocational education courses (VEC) offered by the institution of the Government (Central Government or State Government) or a local authority because in terms of section 66D(a), only specified services provided by the Government are liable to tax and VEC is excluded from the service tax.

However, if the VEC is offered by an institution, as an independent entity in the form of society or any other similar body, service tax treatment would be determined by either sub-clause (ii) or (iii) of clause (l) mentioned above. In the context of VEC, qualification implies a Certificate, Diploma, Degree or any other similar certificate. The words "recognized by any law" will include such courses as are approved or recognized by any entity established under a central or state law including delegated legislation, for the purpose of granting recognition to any education course including a VEC [Circular No.164/15/2012 ST dated 28.08.2012].

13. Entry (m): Services by way of renting of residential dwelling for use as residence

The above entry covers services -

- by way of renting
- of a residential dwelling
- for use as residence

1. **Renting** means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property [Section 65B(41)].
2. **Residential dwelling:** The phrase 'residential dwelling' has not been defined in the Act. It has therefore to be interpreted in terms of the normal trade parlance as per which it is any residential accommodation, but does not include hotel, motel, inn, guest house, camp-site, lodge, house boat, or like places meant for temporary stay.

Whether the following renting transactions are included in the negative entry?

1. **Residential house taken on rent used only or predominantly for commercial or non-residential use:** The said renting transaction is not covered in this negative list entry.
2. **House given on rent and the same being used as a hotel or a lodge:** The said renting transaction is not covered in this negative list entry because the person taking it on rent is using it for a commercial purpose.

3. **Rooms in a hotel or a lodge let out whether or not for temporary stay:** The said renting transaction is not covered in this negative list entry because a hotel or a lodge is not a residential dwelling.
4. **Houses allotted by Government department to its employees and a license fee is charged for the same:** Such service would be covered in the negative list entry relating to services provided by Government and hence non- taxable.
5. **Furnished flats given on rent for temporary stay (a few days):** Such renting as residential dwelling for the bonafide use of a person or his family for a reasonable period shall be residential use; but if the same is given for a short stay for different persons over a period of time the same would be liable to tax.

14. Entry (n): Specified financial services

Following services are included in this entry:-

- (i) Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
- (ii) Services by way of inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.

Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount

Any such service wherein moneys due are allowed to be used or retained **on payment of interest or on a discount** are covered here. It is important to note that the words '**deposits, loans or advances**' have to be taken in the **generic** sense.

They would cover any facility by which an amount of money is lent or allowed to be used or retained on payment of what is commonly called the time value of money which could be in the form of an interest or a discount.

Examples of services covered in this entry:

- Loan or overdraft facility or a credit limit facility provided in consideration for payment of interest.
- Mortgages or loans with a collateral security to the extent that the consideration for advancing such loans or advances are represented by way of interest.
- Fixed deposits or saving deposits or any other such deposits in a bank or a financial institution for which return is received by way of interest.
- Corporate deposits to the extent that the consideration for advancing such loans or advances are represented by way of interest or discount.

Note: This entry would not cover investments by way of equity or any other manner where the investor is entitled to a share of profit.

Whether the following financial transactions are covered in this negative list entry?

S.No.	If	Then
1.	any service charges or administrative charges or entry charges are recovered in addition to interest on a loan, advance or a deposit	such charges or amounts collected over and above the interest or discount amounts would not be part of this negative entry and thus would represent taxable consideration
2.	there is invoice discounting or cheque discounting or any other similar form of discounting	such discounting is covered only to the extent consideration is represented by way of discount as such discounting is nothing else but a manner of extending a credit facility or a loan.
3.	services are provided by banks or authorized dealers of foreign exchange by way of sale of foreign exchange to general public	such services would not be covered in this entry because this entry only covers sale and purchase of foreign exchange between banks or authorized dealers of foreign exchange or between banks and such dealers.
4.	transactions are entered into by banks in instruments like repos and reverse repos*	they are more appropriately excluded from the definition of service itself being the sale and purchase of securities, which are goods.
5.	there is a subscription to or trading in Commercial Paper (CP) or Certificates of Deposit (CD)**	since these are instruments for lending or borrowing money where in consideration is represented by way of a discount, issue or subscription to CPs or CDs, they would be covered in the negative list entry relating to 'services by way of extending deposits, loans or advances in so far as consideration is represented by way of interest or discount'. It may also be borne in mind that promissory note is included in the definition of money in the Act as given in clause (33) of section 65B.

***Repos and reverse repos** are financial instruments of short term call money market that are normally used by banks to borrow from or lend money to RBI. The margins, called the repo rate or reverse repo rate in such transactions are nothing but interest charged for lending or borrowing of money.

****Commercial Paper ('CP') and Certificate of Deposit ('CD')** are understood as unsecured money market instruments which may be issued in the form of a promissory note or in a dematerialized form through any of the depositories approved by and registered with SEBI. CPs are normally issued by highly rated companies, primary dealers and financial institutions at a discount to the face value. CDs can be issued by Scheduled Commercial Banks (excluding RRBs and Local Area Banks) and All – India Financial Institutions (FIs) permitted by RBI.

15. Entry (q): Funeral, burial, crematorium or mortuary services

Funeral, burial, crematorium or mortuary services including transportation of the deceased are included in this entry and hence, are not liable to service tax.

2.13 Date of determination of rate of tax, value of taxable service and rate of exchange [Section 67A]

Section 67A provides that the rate of service tax, value of a taxable service and rate of exchange will be the one as in force or as applicable at the time when the taxable service has been provided or agreed to be provided.

For the purposes of this section, "rate of exchange" means the rate of exchange determined in accordance with such rules as may be prescribed.

Rule 11 of Service Tax Rules, 1994 provides the manner of determination of rate of exchange. It lays down that the rate of exchange would be the rate applicable as per the generally accepted accounting principles on the date when point of taxation arises in terms of Point of Taxation Rules, 2011.